



Brussels, 30 May 2018
(OR. en)

9520/18

Interinstitutional Files:

2016/0131 (COD)
2016/0132 (COD)
2016/0133 (COD)
2016/0222 (COD)
2016/0223 (COD)
2016/0224 (COD)
2016/0225 (COD)

ASILE 31
ASIM 57
CSC 172
EURODAC 7
ENFOPOL 286
RELEX 480
CODEC 896

NOTE

From: Presidency
To: Council

No. prev. doc.: 8715/1/16 REV 1 ASILE 11 CODEC 613
11318/1/16 REV 1 ASILE 28 CODEC 1078
11316/16 ASILE 26 CODEC 1076 + ADD 1
11317/16 ASILE 27 CODEC 1077 + ADD 1 + ADD 2
8765/1/16 REV 1 ASILE 13 EURODAC 3 ENFOPOL 132 CODEC 630
8742/16 ASILE 12 CODEC 619
11313/16 ASIM 107 RELEX 650 COMIX 534 CODEC 1073

Subject:

Reform of the Common European Asylum System and Resettlement

- a) Dublin Regulation:** Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (First reading)
- b) Reception Conditions Directive:** Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (First reading)
- c) Qualification Regulation:** Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (First reading)
- d) Asylum Procedure Regulation:** Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)
- e) Eurodac Regulation:** Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
- f) EU Asylum Agency Regulation:** Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (First reading)
- g) Resettlement Framework Regulation:** Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (First reading)

= Policy debate / Progress report

I. INTRODUCTION

1. On 4 May and 13 July 2016, the Commission submitted seven legislative proposals aimed at reforming the Common European Asylum System (CEAS). This package included the recast of the Dublin Regulation and of the Eurodac Regulation, a proposal for a Regulation on the establishment of the European Union Agency for Asylum (EUAA), a proposal for a Regulation establishing a common procedure for international protection in the EU, a proposal for a Qualification Regulation, the recast of the Reception Conditions Directive and a proposal for a Regulation establishing a Union Resettlement Framework.
2. The Bulgarian Presidency has taken forward the examination of the above-mentioned proposals, initiated by the Netherlands Presidency and continued by the Slovak, the Maltese and the Estonian Presidencies. The current progress report builds on the previous report presented to the Council on 8 December 2017, as set out in document 15057/1/17.

II. STATE OF PLAY OF THE CEAS FILES

A. DUBLIN REGULATION

3. At its meeting in October 2017, the European Council welcomed the progress achieved so far on the reform of the Common European Asylum System and called for further convergence towards an agreement which strikes the right balance between responsibility and solidarity and ensures resilience to future crises, in line with its June 2017 conclusions. In its conclusions, the European Council also stated that it would return to this matter at its meeting in December, and would seek to reach a consensus during the first half of 2018.

4. Following the discussion held among Leaders at their meeting on 14-15 December 2017, the Bulgarian Presidency, guided by the framework set out by the European Council, convened meetings of experts in the format of the Friends of Presidency under the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) to discuss the text of the Dublin Regulation. Seven two or three-day meetings were held in this format between 15 January and 8 May. The key issues identified have been regularly submitted to Coreper for discussion and further guidance, in order to contribute to the process of seeking a consensus in line with the request by the European Council. In addition, two JHA Counsellors meetings were held on 18 May and 28 May.

B. RECEPTION CONDITIONS DIRECTIVE

5. The proposal on the recast of the Reception Conditions Directive was initially examined by the Asylum Working Party, and since July 2017, by the JHA Counsellors. At the Coreper meeting on 29 November 2017, the Estonian Presidency obtained a mandate with broad support to start negotiations with the European Parliament. The first trilogue took place on 12 December 2017. Five more trilogues have thereafter taken place during the term of the Bulgarian Presidency. The intense work developed with the EP at technical level - with the organisation of several drafting committees and technical trilogues aimed at preparing the political trilogues - has allowed to examine the entire Directive and to bridge the positions at political level, quite distant on several subjects, through the elaboration of compromise proposals. The trilogue to be held on 6 June 2018 is expected to address the outstanding issues, for which negotiations are currently ongoing, and should allow to reach a final package deal.

C. QUALIFICATION REGULATION

6. The negotiations with the European Parliament started in September 2017. So far six trilogues have already taken place with numerous technical meetings in-between. The Bulgarian Presidency made sustained efforts to advance towards an agreement with the EP on the Qualification Regulation. In-depth and fruitful discussions took place at technical level and an important number of elements were clarified both with respect to the qualification criteria and to the rights and benefits granted to beneficiaries of international protection. These were also confirmed at political level. On certain important elements (e.g. the mandatory vs. optional use of the internal protection alternative, the mandatory vs optional nature of the review of the status, the definition of family members, the period of validity of residence permits) agreement is still to be obtained. Two more trilogues are foreseen (30 May and 14 June) and the Presidency intends to close this file by the end of its term.

D. PROCEDURES REGULATION

7. The Bulgarian Presidency finalised the third examination of the proposal in the Asylum Working Party and the fourth examination at the level of JHA Counsellors. Constant efforts were made to answer the concerns expressed by Member States in relation to different elements of the proposal (e.g. the tasks of the competent authorities, the legal assistance and representation throughout the procedure or the deadlines for appeals, the 'safe country' provisions) and to ensure coherence with the relevant provisions of the Dublin Regulation. The provisions aimed at closing certain procedural gaps and preventing abuse of the asylum system were closely scrutinised with the aim of finding the most efficient solutions while offering a certain degree of flexibility to Member States. Significant progress has been made overall with only a few outstanding issues still remaining, such as the length of the data storage and the interaction with the Dublin Regulation. Four more meetings of JHA Counsellors are foreseen and the Presidency intends to present the text for a mandate for negotiation with the EP soon after the JHA Council meeting.

E. EURODAC REGULATION

8. The inter-institutional negotiations on the recast of the Eurodac Regulation started in September 2017, based on the extended mandate agreed at Coreper on 15 June 2017 and the vote in the LIBE committee on 30 May 2017. On 14 February 2018, COREPER extended the Council's negotiating mandate for the Eurodac Regulation to also cover issues related to resettlement. Four trilogues took place during the Estonian Presidency and the fifth one was held during the Bulgarian Presidency on 25 April 2018. While it has been possible to find common ground between the co-legislators on most provisions of the recast Regulation, some outstanding issues still remain. These include the length of the data storage period for asylum seekers, transfer of data to third countries for the purposes of return, the issue of a person accompanying unaccompanied minors at the time their biometric data are being taken, and the use of coercion as a consequence of non-compliance with the taking of biometric data. On some of these issues a possible agreement has been found at a technical level. The Presidency hopes to close these issues in a trilogue with the European Parliament before the end of its term. The Presidency also plans to start discussions with the European Parliament on the resettlement related provisions in this Regulation.

F. EUAA REGULATION

9. Following the agreement on a partial general approach in Council, on 20 December 2016, the Maltese Presidency started negotiations with the European Parliament in January 2017. As a result of a series of technical meetings and trilogues, the Maltese Presidency reached an agreement on the enacting terms of the text during the trilogue of 28 June. The Estonian Presidency continued work at a technical level in order to align the recitals of the text with the main body of the proposal and reached an agreement with the European Parliament on this issue. The Estonian Presidency also completed the pledging for the asylum reserve pool reaching the number of 500 experts. On 6 December 2017, Coreper took note of the agreement reached with the European Parliament on the text of the proposal, excluding the text placed in square brackets referring to other proposals of the CEAS. Further work on the proposal has been postponed pending developments in the negotiations on the rest of the CEAS package.

G. RESETTLEMENT REGULATION

10. The mandate for negotiations with the European Parliament was adopted on 15 November 2017. The inter-institutional negotiations started in December 2017. Four trilogues have taken place under the Bulgarian Presidency so far, which have allowed to make some progress regarding several elements of the proposal. More trilogues will be convened in the coming weeks with the aim of reaching political agreement by the end of the term of the Presidency.

III. COMMON EUROPEAN ASYLUM SYSTEM

11. The above files are all interlinked and constitute the building blocks of the Common European Asylum System. The inability to discourage secondary movements of asylum seekers between Member States has been identified as one of the biggest weaknesses of the EU asylum system. The current Dublin Regulation aims to prevent multiple asylum applications by making one Member State responsible for an asylum application, and providing clear indications of which Member State is responsible, irrespective of the asylum-seeker's preference. It provides for a system of transfers of applicants to the responsible Member State. However, the current 'Dublin' rules on the cessation of responsibility provide incentives for applicants or irregular migrants to move onward to the country of their choice and apply for protection there. Moreover, in case they are able to avoid the obligation under the Eurodac Regulation to provide biometric data, the Dublin Regulation cannot be correctly applied, which, together with the low number of effected transfers, causes the system to become ineffective.

12. Secondary movements are also encouraged by the limited level of harmonisation of Member States' asylum systems, for example as regards the length of procedure or reception conditions, which results at least partially from often optional provisions in the current Asylum Procedures Directive and Reception Conditions Directive (RCD). Likewise, removal of the remaining discretionary provisions in the criteria for assessing the merits of asylum claims, through the Qualification Regulation, should also help to reduce secondary movements.

13. Addressing secondary movements has been one of the main aims of the CEAS reform. A range of measures across the entire asylum acquis has been proposed to discourage applicants and beneficiaries of international protection from travelling onward to the Member State of their preference and sanction such irregular movements. Apart from measures in the Dublin Regulation and the Eurodac Regulation, other procedural improvements have been proposed in the Asylum Procedure Regulation (APR). Because this Regulation will replace the current Directive, the related deadlines and rules will be directly applicable in Member States thus removing the big discrepancies currently existing in terms of procedure at EU level and removing the incentive of moving between Member States looking for more rapid proceedings. It also contains clear obligations for the applicant accompanied by strict sanctions in case of failure to comply. Another important element concerns the harmonisation of the rules on safe third countries, first countries of asylum, and safe countries of origin, which are referred to further below.
14. The above clearly demonstrates that all the CEAS files are closely intertwined. Therefore real progress towards the goals of the CEAS, that is limiting secondary movements and making asylum procedures more efficient can be achieved only if an agreement can be found on all CEAS files (see annex 1).

It is against this background that the Presidency submits to the Council for debate the below questions on the two files on which the Council has not yet reached an agreement and no negotiation mandate has been adopted, namely the Asylum Procedure Regulation and the Dublin Regulation. Coming to an agreement on these two files is also crucial as regards the negotiations with the EP, so as to finalise the CEAS reform within the mandate of the current Parliament.

A. PROCEDURES REGULATION

15. The proposal for an Asylum Procedure Regulation contains detailed provisions regarding the safe country concepts, namely the safe third country, the first country of asylum and the safe country of origin. The safe third country and the first country of asylum concepts are grounds for declaring an application inadmissible, whereas the safe country of origin is a ground for examining an application in an accelerated examination procedure. The proposal foresees EU lists for both safe countries of origin and for safe third countries. A list of safe countries of origin was annexed to the proposed Regulation, whereas it did not contain a list of safe third countries, but stipulated that this is to be adopted at a later stage through a future amendment to the Asylum Procedure Regulation (Article 46).¹
16. In-depth discussions took place in the various Council preparatory bodies with respect to different elements related to the concept of safe countries. Thus, the criteria that should be fulfilled by a safe third country or by a first country of asylum and the related concept of 'sufficient protection' were the object of ample discussions, especially following the European Council conclusions of June 2017, which requested an alignment of the relevant provisions in the proposal with the effective requirements arising from the Geneva Convention and EU primary law. These elements were also discussed at a SCIFA meeting² on 28 September 2017. Significant progress has since been made in clarifying these concepts and the latest Presidency compromise proposals have been generally supported by Member States, thus meeting the request of the European Council.

¹ Such lists are an essential element of the APR and therefore may only be modified via a Regulation that should be adopted through the normal legislative procedure. See the ECJ judgment in case C-133/06.

² 12331/17

17. Under the latest Presidency compromise proposal, Member States will always be able to keep or introduce national lists of safe countries of origin or of safe third countries in parallel to the EU lists (Article 50). This means that, in the case of an applicant coming from a safe country of origin, an application can be declared unfounded even though that country is not on the EU list of safe countries of origin but on the national list of the Member State responsible. Likewise, in the case of an applicant who has come to the EU via a safe third country and can be readmitted to that third country, an application can be declared inadmissible even though that country is not on the EU list of safe third countries but on the national list of the Member State responsible. Nevertheless, where a third country is suspended from being designated as a safe third country at Union level Member States shall not designate that country as a safe third country at national level. If the third country is no longer designated as a safe country at Union level Members States may only designate that third country as a safe third country if the Commission does not object to that designation.
18. The content of the EU list of safe countries of origin, as well as the option of having an EU list of safe third countries already annexed to the Asylum Procedure Regulation, were most recently discussed during a SCIFA meeting³ on 17 May 2018. Following this meeting, it became clear that Member States agree to have an EU list of safe countries of origin in parallel to national lists.

³ 8735/18

The discussions in SCIFA also confirmed Member States' support for having an EU list of safe third countries annexed to the Asylum Procedure Regulation. The discussions indicated as well that there is no need to wait for an agreement on the content of these lists before starting negotiations with the EP, and that the content can be agreed among Member States at a later stage in the form of a supplementary negotiation mandate. In the meantime, the Presidency intends to seek a negotiation mandate on the rest of the proposal before the end of June 2018.

19. *Against this background, delegations are invited to agree that:*

- *an EU list of safe third countries should be ready to be annexed to the Asylum Procedure Regulation by the time of adoption;*
- *a negotiation mandate on the Asylum Procedure Regulation should be adopted by CRP as a matter of urgency till the end of June so as to enable the incoming Presidency to start negotiations with the EP.*

B. DUBLIN REGULATION

20. Building on the discussions held under the previous Presidencies on the effective application of the principles of solidarity and responsibility, the Bulgarian Presidency has anchored into the Dublin Regulation the foundations for a new crisis mechanism for managing the migration and asylum systems in the Union when under pressure. This has been done in parallel with the work undertaken on other building blocks of the asylum and migration system, to be constructed around the aspects of the comprehensive policy as concerns reinforced border management, return and external dimension. The Presidency proposal has been made on the understanding that the European response to disproportionate migratory pressure has to be systemic, coordinated and timely. It should enable addressing in an appropriate way different situations that may arise in the EU but also externally, and should therefore be adaptable to the different levels of pressure, different migratory flows or situations in the countries of origin and transit. Coherent action from all relevant stakeholders, including Member States, EU institutions, bodies and agencies should be ensured.

Based on the experience gained and lessons learnt from the 2015 crisis and the outcomes of the discussions at political level on the main principles of the Dublin reform, the Bulgarian Presidency has suggested including a new chapter providing for a comprehensive European response to disproportionate migratory pressure.

The situation, in facts and numbers, observed between 2010 and 2017 clearly shows the need for a structured mechanism at EU level to ensure that any potential challenge to EU asylum and migration systems is addressed in a systematic and timely manner. As shown in annex 2 the number of asylum applications started to increase at EU level in 2011 – when the conflicts in Syria and Libya began - before reaching their peak in 2015. The lack of pre-agreed criteria and measures resulted in a flurry of ad-hoc measures to respond to a deteriorating situation. This delayed the adoption of the necessary measures until 2015-2016, when it had become absolutely indisputable that the situation was so severe that it required a strong EU response. On a positive note, it can be also pointed out that when the respective measures were eventually triggered, Member States and EU institutions and agencies acted jointly together, allowing for reinforced external border protection, a steady reduction in the numbers of irregular arrivals and lives lost at sea, replacing disorderly movements with legal and safe pathways for people in genuine need of international protection and helping Member State most affected addressing the pressure. While it is difficult to estimate the impact of the individual measures that were launched during this period, it is the combination of all these measures that actually led to a gradual and constant decrease in pressure and better management of the asylum and migration flows, including reducing the number of irregular arrivals sustainably over time.

21. By introducing the new chapter, the Presidency aims to use the Dublin Regulation to establish the foundations for developing a fully-fledged crisis response to managing the EU's migration and asylum system when put under pressure, notably by providing a set of measures that could be applied during the different stages of a potential crisis. The measures should be designed so as to enable a tailor-made response to different pre-crisis and crisis situations: different levels of pressure, different migratory flows, different situations in countries of origin and transit, etc.

The Presidency proposal distinguishes three phases of the crisis mechanism: normal circumstances, challenging circumstances and severe crises. The second stage, challenging circumstances, has been divided into two sub-stages. The new text of Chapter VIA sets out measures and additional criteria that should be applied when one or more Member States are in challenging circumstances or severe crisis. The key concept here is that of fair share, which denotes the number of applicants that each Member State would be in a position to handle . If, despite the measures taken, the situation deteriorates, the procedures provided for the situation of severe crisis should apply (see annex 3).

22. As a result of the abovementioned discussions, the overall objectives of the Dublin Regulation have been confirmed and broad support has been received on most provisions of the draft Regulation. However, many delegations highlighted that their final positions will depend on the overall balance achieved between solidarity and responsibility and the overall effectiveness of the reformed Dublin.
23. Striking the right balance between solidarity and responsibility is crucial for the future functioning of the new EU asylum system. On the one a hand clear set of criteria is needed for determining the responsibility which does not shift or cease easily. The reformed Dublin system has to prevent pull factors and limit secondary movements and abuse by setting clear obligations for the Member States and for the applicants including consequences for non-compliance, and ensure efficient procedures to facilitate Dublin transfers. On the other hand, the reformed system must have a strong preventive component, limiting as much as possible the crisis situations but that, at the same time, when unforeseen events arise or the burden on a Member State is disproportionate, the Union must have at its disposal a well-functioning, effective and easy-to-trigger solidarity mechanism.

24. In view of the Presidency taking account of the positions of delegations, the balance in the Dublin Regulation should be based on the following elements (see annex 4):

As regards responsibility:

- stable responsibility of 8 years;
- strengthened rules for the application of the criteria for determining the Member State responsible;
- start of the Dublin procedures after registration;
- shortened deadlines for conducting all stages of the Dublin procedures;
- introduction of take back notifications.

As regards solidarity:

- fair measurement of the asylum burden of every Member State;
- automatic financial support (per capita for applicants, beneficiaries and returnees);
- automatic expert, technical and operational support in the areas of asylum and return;
- targeted support for the external dimension, directed to third countries of origin and transit, as well as to first countries of asylum and neighbouring countries;
- targeted allocation primarily on a voluntary basis, with strong incentives, and, as a measure of last resort, on the basis of a Council Implementing Decision as an effective guarantee of triggering allocation.

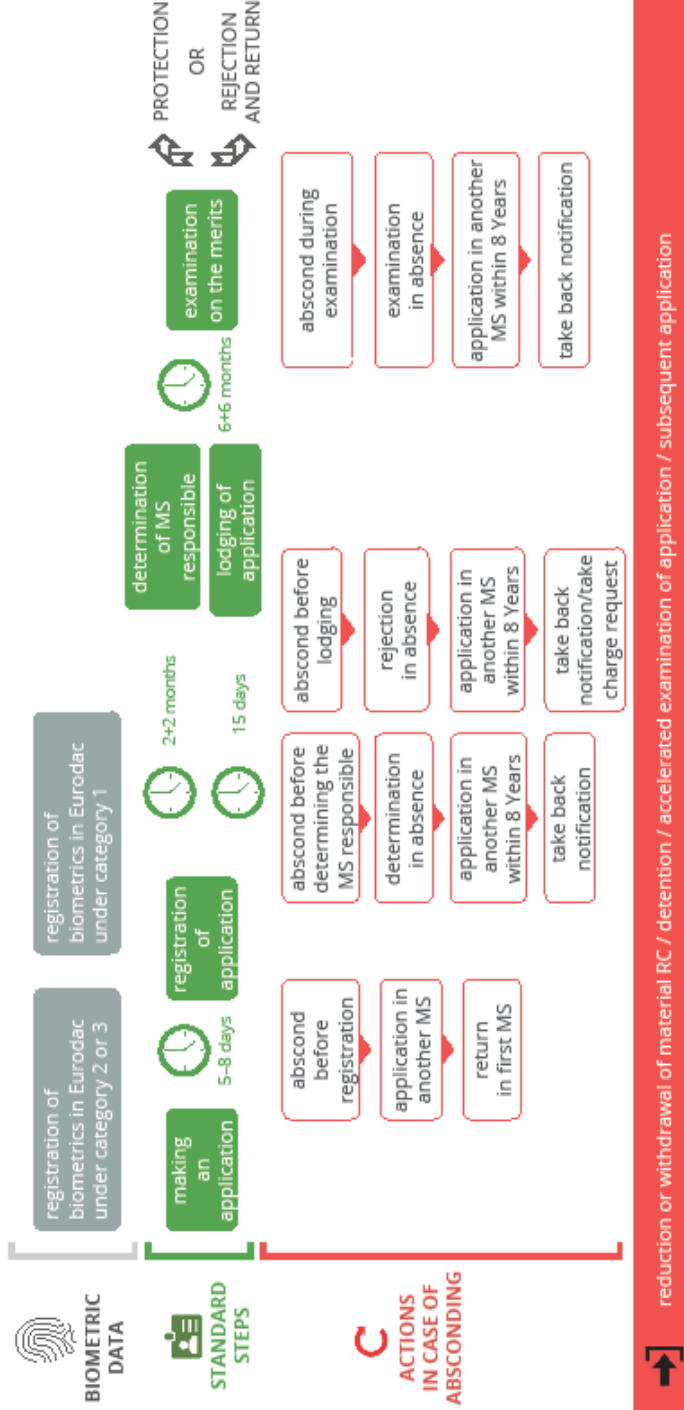
25. *Against this background, delegations are invited to agree that :*

- *significant progress was achieved so far on finding a satisfactory balance between responsibility and solidarity and ensuring resilience to future crises,*
- *the compromise proposal prepared by the Presidency represents a good basis for the preparations in which the presidency of the European Council, in consultation with the rotating Presidency and building on the work done so far, will engage after the meeting of the Council, in view of the meeting of the Heads of State or Government at the end of June, focussing on the main outstanding issues.*

Depending on the outcome of the June European Council, a negotiating mandate should be quickly adopted in order to start negotiations with the European Parliament as soon as possible.

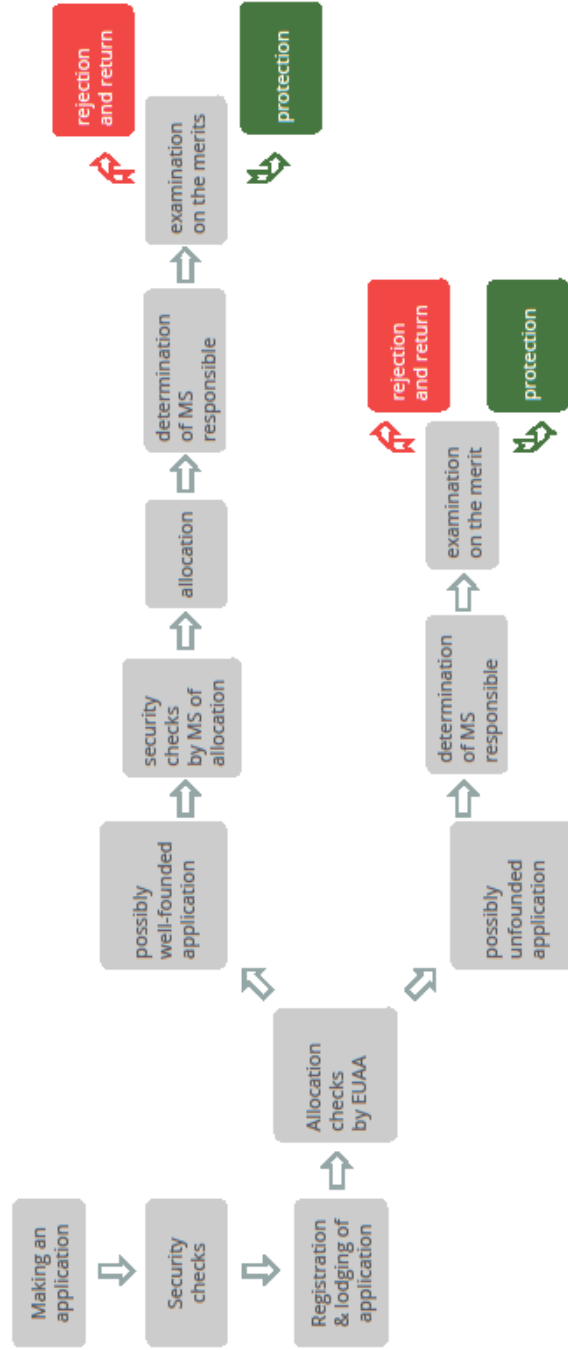
New CEAS under normal circumstances

Streamlined for persons in need of protection, Rigid for asylum shopping



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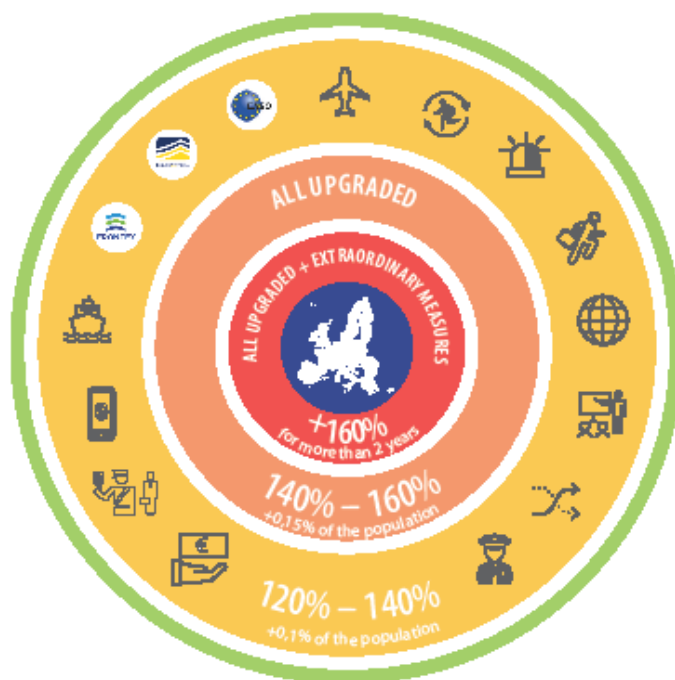
New CEAS effective procedures under crisis



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New Dublin

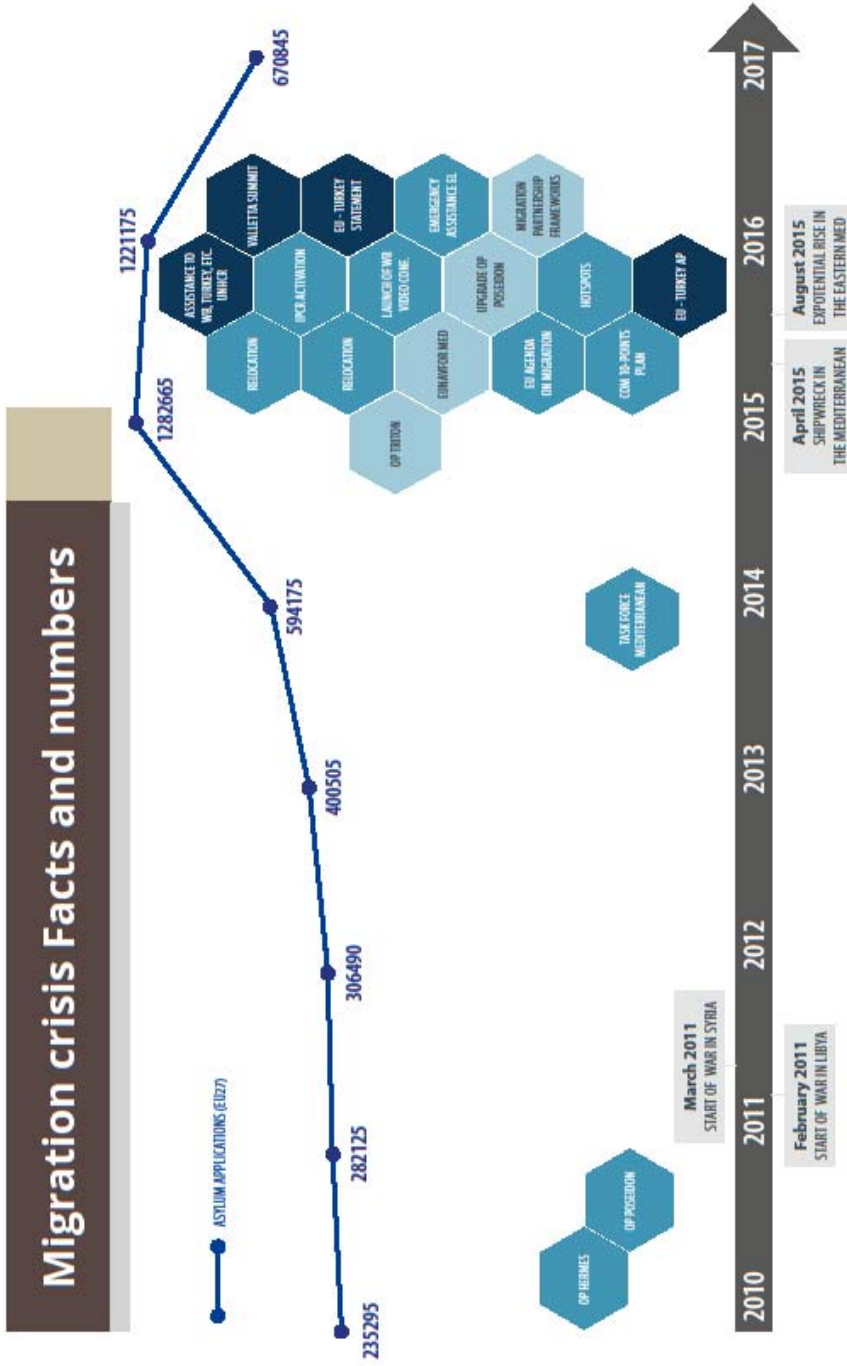
PROTECTING EUROPE - REVERSING THE DYNAMICS



	EU REACTION IN CHALLENGING CIRCUMSTANCES		EU REACTION IN SEVERE CRISIS
LEAD	COM	COUNCIL	EU CO
TRIGGER	Automatically Immediate, targeted (simultaneously or individually)	Council decision	EU CO guidance
RESPONSE	<ul style="list-style-type: none"> Financial support Expert support Technical support Operational support Returns Resettlement Emergency evacuation schemes Deployment of EMLOs Activating EU DEL Capacity building and training in 3rd countries Allocation Migrant smuggling Other measures 	ALL UPGRADED	ALL UPGRADED + Extraordinary measures
ACTION	COM, EEAS, Agencies MS concerned different MS depending on willingness, possibilities and real needs	COM, EEAS, Agencies MS concerned all MS on all measures	According to guidance from EU CO



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Main objectives of the reform

- ✳ Curbing secondary movements ✳ Alleviating burden from the front-line MS

To be applied by individual MS

RESPONSIBILITY

- stable responsibility of 8 years*
- strengthened rules for application of the criteria for determining the responsible MS*
- allowing the start of the procedures as of the registration*
- shortened deadlines for all stages of the procedure*
- introduction of take back notification*

SOLIDARITY

- fair measurement of the asylum burden of every MS*
- automatic financial support (applicants, beneficiaries, returns)*
- automatic expert, technical and operational support*
- targeted support for the external dimension*
- targeted allocation at all stages*

Overall outcome for the EU asylum system:

- ✳ Efficient and effective determination of responsible MS;
- ✳ Streamlined asylum procedures eliminating asylum shopping;
- ✳ Clear obligations for applicants and rigid consequences for non-compliance;
- ✳ Fully-fledged crisis mechanism for managing the system when under pressure;
- ✳ Clear criteria for levels of pressure on a MS's asylum system;
- ✳ Mechanisms for EU solidarity